

In the Matter of Merchant Mariner's Document No. Z-390980 and all other Seaman Documents  
Issued to: FRANCISCO ALBANO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1217

FRANCISCO ALBANO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 7 December 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS SANTA TERESA under authority of the document above described, on 19 August 1959, Appellant wrongfully cut wiper Fontinelli with a dangerous weapon, to wit: a razor blade.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification. Both Appellant and Fontinelli testified. Their testimony differs only as to what preceded the use of the razor blade by Appellant to cut Fontinelli in four places. Forty-one stitches were required to close the wounds. Nobody else was present at the time this incident occurred in the room which these two seamen shared with another wiper.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

OPINION

No separate findings of fact are considered to be necessary because, even accepting the version presented by Appellant, it is my opinion that he was guilty as alleged.

Appellant testified that Fontinelli entered the room about 0100, started an argument and struck Appellant once in the left eye; Fontinelli took hold of a bunk stepladder and stood in the middle of the room between Appellant and the door; Appellant picked up a razor blade, advanced toward Fontinelli and cut his face when he grabbed Appellant; they grabbed each other and Appellant then cut Fontinelli three times on the back and left arm before Appellant left the room.

The only contention by counsel on appeal is that Appellant acted in justifiable self-defense

after he was struck by Fontinelli because Appellant could not have backed out of the room, as stated in the Examiner's decision, since Fontinelli was between Appellant and the door.

The truth of fallacy of this statement by the Examiner does not affect the outcome. I agree with the Examiner that the severity of the attack upon Fontinelli by Appellant is indicated by the forty-one stitches required and that this use of a dangerous weapon far exceeded the reasonable bounds of self-defense even if Fontinelli was the original aggressor. There is no evidence which reasonably tends to show that Appellant was in danger of grave bodily injury when he attacked Fontinelli with the razor blade. Consequently, revocation is the only suitable order despite Appellant's prior clear record for sixteen years.

APPEARANCE for Appellant:       Ellias C. Hoppenfeld, Esquire, of New York  
City

### ORDER

The order of the Examiner dated at New York, New York, on 7 December 1959, is  
AFFIRMED.

A. C. Richmond  
Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 28th day of February, 1961.